

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5955

PETITION OF ROBERT H. GERARD AND CAROL GOLDBERG

(Hearing held February 4, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, March 25, 2004)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(1). The petitioner proposes to construct a one-story addition that requires a three (3) foot variance as it is within four (4) feet of the side lot line. The required setback is seven (7) feet.

Scott Wilets, an architect, appeared with the petitioners at the public hearing. Carol and Robert Smalls, adjoining property owners, appeared in opposition to the variance request.

The subject property is Lot 16, Block F, Sligo Park Hills Subdivision, located at 109 Park Valley Road, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 01049375).

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 3 x 13.7 foot one-story addition in the eastern side yard.
2. The petitioners testified that their property is an irregularly-shaped lot that is located at the top of a hill. The petitioners testified that the property is a narrow, steeply-sloped lot, with the residence sited at the rear of the lot. The petitioners testified that the variance request would permit the expansion and renovation of their existing kitchen and the relocation of the internal stairs of the house.
3. The petitioners testified that their property is adjacent to Sligo Creek Park and that the neighboring lots have larger portions of their lots that are flat. The petitioners testified that they were unaware of any concerns Mr. and Mrs. Smalls had about their variance request.

4. Mr. and Mrs. Smalls testified that they believed that the petitioners' variance request would reduce the value of their property and would hinder the use of their rear yard. Mr. Smalls testified that the petitioners' addition would be visible from their living room and obstruct their view of the neighborhood's pastoral setting and would be an invasion of privacy.

FINDINGS OF THE BOARD

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioners' lot has no exceptional topographical or other conditions peculiar to the property that are not shared with the adjoining and neighboring properties.

The Board notes that most of the lots in the petitioners' neighborhood are irregularly-shaped and that the siting of a house or the internal design of a house are not zoning reasons for the grant of a variance. See, Exhibit No. 8, (zoning vicinity map).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of three (3) feet from the required seven (7) foot side lot line setback for the construction of a one-story addition is denied.

The Board adopted the following Resolution:

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 25th day of March, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.